

# UTAH SCHOOL LAW UPDATE

Utah State Office of Education

March 2009

Inside this issue:

# Legislative Wrap-Up

Deputy Superintendent Larry Shumway prepared the following summary of the 2009 Legislative Session (somewhat abridged):

The Legislature adjourned at 11:10 p.m., a surprise to all. Early adjournment is an occurrence that is very rare – only once or twice in anyone's memory.

In a "point of personal privilege" just prior to the adjournment of the House, Representative Greg Hughes (chairman of the House Education Standing Committee) gave a very gracious and complimentary recognition of Superintendent Harrington's long and exemplary service to Utah's school children. His remarks were followed by a standing ovation for Patti by the entire body and gallery.

Of course, the most critical work of the session was the budget.

1. State revenue available for appropriation declined by an unprecedented \$1 billion. This gap was ultimately closed with a combination of General/Education Fund budget cuts (\$470 million), revenue increases (\$70 million), Federal assistance (\$390 million), and other onetime fund balances. Legislators did not use any of the state's two "rainy day" funds with combined balances of \$414 million – and did not touch the \$100 million reserve set aside for future education enrollment growth. The total FY2010 state budget declined by around 9 percent. Public

Education, which represents nearly half the state's spending, declined only 5.2 percent.

The legislature used flexible one-time American Recovery and Reinvestment Act of 2009 (ARRA) funds to allow state agencies to transition to a "soft landing" in budget cuts. Base budgets cuts were made at the 9 percent in the FY2009 year and 15 percent in the FY2010 year.

2. The Legislature made on-going reductions in the Public Education budget for FY2009 and FY2010, and partially mitigated these reductions with one-time ARRA funds. The total state-fund budget for FY2010 is just over \$2.2 billion, as compared to the original FY2009 budget of \$2.69 billion. It was generally the intent of the legislature that the reductions that remain after "backfill" would take place in areas of the budget that allow flexibility for local school districts in budget decisions. The elimination of several block grant programs (most notably the Local Discretionary Block Grant and the Quality Teaching Block Grant) transferred funds from less flexible "below the line" programs to more flexible "above the line" programs.

The Legislature "funded" enrollment growth. It would be better, perhaps, to say that the funds were transferred in the budget to maintain a balance between the num-

ber of weighted pupil units (WPU) and the appropriations in the Basic School Program, the Charter School Cost Replacement Program, and the Board and Voted Leeway Program.

3, Reductions at the Utah State Office of Education (USOE) total 18 percent, or \$4.7 million. When averaged with the School for the Deaf and Blind, the average of "education agencies" was 15.7 percent, the same as for other state agencies. But the USOE did take a proportionally larger "hit" than other state agencies to prevent a more significant reduction to USDB.

Here is a summary of some of the non-budgetary bills that elicited the most attention during the 2009 session.

PASSED HB 15 Career and Technical Education Amendments (Bigelow). This bill modified the governance structure of the Utah College of Applied Technology (UCAT), split the Salt Lake/Tooele CAT and merged the Salt Lake portion with Salt Lake Community College. It also added a UCAT nonvoting member to the Utah State Board of Education.

FAILED HB 66 Property Tax Amendment (Newbold). This bill would have consolidated most local school district property tax levies. It would have resulted in substantial new equalization between districts, with some districts

(Continued on page 2)

UPPAC Case of the Month	2
Legislative Wrap- up cont.	2
Recent Education Cases	3
Your Questions	3



#### **UPPAC CASES**

The Utah State Board of Education revoked Kenneth William Prince's educator license by default. Prince entered a plea in abeyance to lewdness and violated the terms of an existing Stipulated Agreement. He failed to respond to the allegations.

The Board suspended Kameron Klitgaard's license for one year for using school computers to access, store, and view pornographic images.

The board permanently revoked Scott Cody Rogers' educator license after he plead guilty to two counts of aggravated sexual abuse of a child.

### Legislative Wrap-Up (cont.)

(Continued from page 1)

gaining revenue and others losing revenue (in some cases as much as 15 percent).

FAILED HB 150 State Board of Education Member Election Process Amendments (Moss). Would have created direct non-partisan election of members of the State Board of Education. Efforts were made to substitute a bill to make the Board elections partisan. These attempts failed. The original bill was defeated in the Senate Education Committee.

FAILED HB 229 Public School Funding (Harper). Would have substituted a significant portion of the property tax revenue in public education with sales tax revenue. It would have raised sales tax by about 1.5 percent.

PASSED HB 264 Educator Evaluation Amendments (Menlove). Updates the requirements of the Educator Evaluation Act, adding an increased focus on instructional quality and mentoring.

PASSED HB 296 School for the Deaf and Blind Amendments Sumsion). Revises the administrative structure of the USDB, designated the USDB as

the "LEA" in certain circumstances, and provides for the on-going funding of the Utah State Instructional Materials Center.

PASSED HB 328 *Teacher Quality Amendments* (Hughes). This bill established a small pilot program to continue the development of differentiated compensation programs for public school employees.

FAILED SB 48 Teacher Licensing by Competency Amendments [Buttars). Would have allowed an individual to apply for a competency based educator license from the State Board of Education.

PASSED SB 81 Concurrent Enrollment Program Amendments (Dayton). Clarifies the funding distribution in the concurrent enrollment program, based on the primary provider of instruction. The bill requires a placement assessment in certain cases, and designates the institution that will provide the assessment.

PASSED SB 153 County and Municipal Land Use Amendments (Madsen). Prohibits municipalities from requiring school district review of development plans.

FAILED SB 159 Math Education Ini-

tiative (Stephenson). Created a pilot program for Singapore Math in elementary schools.

PASSED SB 185 Federal Education Agreement Requirements Amendments (Dayton). Increases the threshold amounts prior to required legislative approval of agreements to receive federal education funds.

FAILED SB 199 Equal Recognition of School Parent Groups (Bramble). Required that schools include all legally organized parent groups in committees and other school processes.

The Legislature, to a great extent, "walked the talk" relative to the prioritization of public education funding. While some ideas (such as tax increases) were off the table from the beginning, legislators generally made use of the options available to them to limit the reductions to public education funding. Given the economic circumstances and the uncertainty of future revenues, it would be hard not to credit the Legislature with acting consistent with their stated priorities.

#### **UPPAC** Case of the Month

Educators, in general, are a helpful group. Few would join a profession that requires a strong devotion to helping children learn without commensurate compensation otherwise! But educators can cross professional boundaries when they become too helpful.

When educators decide to befriend a student, they are often full of good intentions. But when the educator starts to think he is a surrogate parent to the student, or worse, an intimate partner to the student, the Utah Professional Practices Advisory Commission may need to investigate.

While it is clear to most rational educators that they should NEVER date a student, there are a number of educators who fail to see the problem with becoming a surrogate parent. But interfering in the parent-child relationship can be almost as damaging to a student as an intimate relation-

ship with a teacher.

Educators who try to fill the parental role may forget that they are only hearing one side of the story. By stepping in as the student's version of the perfect parent, with little knowledge of what is actually occurring in the student's home, the educator may drive a further wedge into the family relationship.

When a parent seeks a restraining order against an educator, he should get the message that he has overstepped his bounds as an educator in a grossly unprofessional manner.

To avoid reaching the point of a criminal complaint against an educator, educators should understand that it is unwise to buy gifts for students, meet students privately outside of school, text or phone students regularly with personal messages, or otherwise treat any one student as anything more than a student. Educators can care for

their students, but they cannot presume to replace a student's family.

Further, educators need to be aware that, once a student begins discussing personal family problems, Utah law requires that the educator obtain parental permission to continue those discussions\*. Without that permission, the teacher needs to gently steer the student to other topics or better sources of information about family dynamics than the teacher.

Educators want to help. No one wants to see a student hurting from his or her treatment at school or home. But an educator who tries to usurp the parental role from the student's actual parents will probably find himself facing licensing action for unprofessional conduct.

\* If the educator has reason to believe that the parents are abusive, the educator should be calling DCFS or law enforcement.

Utah State Office of Education Page 2

#### **Recent Education Cases**

Simpson v. Holmes County Bd, of Ed. (Miss. App. Ct. 2009). A principal's really bad day offered sufficient grounds for termination.

During a one day audit by the Mississippi Department of Education, the auditors witnessed a fire in a classroom, a pellet gun shooting, and a fight during a Black History Month presentation.

The principal was terminated based on this apparently chaotic situation. He appealed his termination, claiming it was not based on substantial evidence.

The principal argued first that he was unaware of the fire. The court determined that it was the principal's job to know when a classroom is on fire.

Shortly after the fire, the state visitors were struck by pellets while walking to the Black History Month program. The court determined that the principal was aware that students had shot pellets at the visitors, but failed to make a required report about the shooting to the local board.

The principal did manage to break up the student fight during the presentation, but the court determined that by this time, the board had ample evidence of the principal's failure to perform his duties. The principal argued that the Superintendent had simply overreacted to a really bad school day. The court, however, found that Simpson could not abdicate his responsibilities by claiming he was not informed about what was happening in his school, nor did the principal make any valid excuses for failing to report the pellet shoot-

ing.



Combined, the incidents, and failure to report each incident, showed the principal's inability to maintain

order and safety at the school and his termination was warranted.

Buell v. Hughes (Conn. Dist. 2009). The Connecticut District Court ruled that changes to the certification requirements for teachers did not violate the equal protection rights of certificate holders.

Two teachers who held level 091 licenses sued state administrators over changes to the certification requirements. Both teachers had certificates to teach tech classes. Both were veteran teachers and had been allowed to teach some core math classes with the 091 certification.

A new state law, enacted in response to No Child Left Behind,

required that teachers meet more rigorous standards and obtain a higher level of certification to teach core math, science or art classes. Part of the new requirements to obtain the certification included passing the Praxis II exam.

The first teacher took the exam 12 times but failed to pass (despite 27 years of teaching experience) and was denied the new license. The other teacher failed the exam 11 times but did pass after filing the lawsuit.

The teachers argued that other teachers were not required to take the exam and, therefore, the complaining teachers were treated differently in violation of the Equal Protection Clause.

The Court disagreed, noting that the other named teachers all had the other level of certificate before the new requirements were enacted (some had held the higher certification level for 20 years).

The Court went on to note that it did not find it unreasonable for the Department of Education to impose more rigorous standards for teacher certification in light of "highly qualified" requirements established on the federal level.

## **Your Questions**

Q: A local college has asked for UBSCT test scores for all of our students to determine placement for students and to select students for recruitment to the college. Can we provide the test scores of all students who have completed the tests to an in-state institution of higher education?

A: The scores can only be provided if one of three conditions are met:

1. Individual, identifiable student test scores can be sent to a

What do you do when. . . ?

college or university **where the student(s) seeks to enroll**. If the student has indicated, by sending in an application or registering for a class, that he seeks admission to the school, then the school district can send the scores.

2. If UBSCT scores or pass/no

pass designations are identified as "directory information" in the required annual notice sent to parents, and the parents have not opted out of having directory information provided to colleges or universities, the scores can be sent.

3. If the parent provides written consent for the student's scores to be sent to the college, the scores can be sent.

If none of these conditions has

Utah State Office of Education Page 3

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

# Your Questions Cont.

(Continued from page 3)

occurred, the scores are protected under FERPA. Any district policy or practice of send-

ing student scores to colleges or universities for recruitment purposes, or where the student has not indicated any intent to apply to the school, would violate the federal law.

Q: My daughter's teacher announced to the class room that all students failing his class would have to come up to his desk and call home to tell their parents they are failing. The teacher then read out the names to come up and make the phone call. Is this allowed?

A: The teacher's actions may

violate the federal Family Educational Rights and Privacy Act (FERPA). FERPA protects student records from disclosure to persons

with no legitimate educational interest in the records. Informing all students in a class that particular, identified students are failing is an example of a disclosure to persons who have no legitimate reason to know this information.

FERPA does make some exceptions to the general rule, however, including permitting schools to designate some student information as "directory information" which can be disclosed without parental consent. If the school includes mid-course grades in directory information, then the teacher's actions were ill-advised from a pedagogical standpoint, but

not in violation of FERPA.

Q: Please clarify last month's discussion about kindergarten.

Must a student who is 5 by Sept.

2 but already attended kindergarten in another state repeat kindergarten here?

A: No. The district makes placement decisions and can decide to enroll a 5 year old who has completed kindergarten elsewhere in first grade if the district determines that it is an appropriate placement.

The Sept. 2 deadline is an age requirement only. Once a student meets the deadline, he or she can enroll in public education. Which grade the student is placed IN is for the school and district to decide, in consultation with the parent(s) or guardian(s).